

## **Chapter 20**

### **Employment Relations and Collective Bargaining**

#### **34-20-1 Declaration of policy.**

The public policy of the state as to employment relations and collective bargaining in the furtherance of which this chapter is enacted, is declared to be as follows:

- (1) It recognizes that there are three major interests involved, namely: that of the public, the employee, and the employer. These three interests are to a considerable extent interrelated. It is the policy of the state to protect and promote each of these interests with due regard to the situation and to the rights of the others.
- (2) Industrial peace, regular and adequate income for the employee, and uninterrupted production of goods and services are promotive of all of these interests. They are largely dependent upon the maintenance of fair, friendly, and mutually satisfactory employment relations and the availability of suitable machinery for the peaceful adjustment of whatever controversies may arise. It is recognized that certain employers, including farmers and farmer cooperatives, in addition to their general employer problems, face special problems arising from perishable commodities and seasonal production which require adequate consideration. It is also recognized that whatever may be the rights of disputants with respect to each other in any controversy regarding employment relations, they should not be permitted in the conduct of their controversy to intrude directly into the primary rights of third parties to earn a livelihood, transact business, and engage in the ordinary affairs of life by any lawful means and free from molestation, interference, restraint, or coercion.
- (3) Negotiation of terms and conditions of work should result from voluntary agreement between employer and employee. For the purpose of such negotiation an employee has the right, if he desires, to associate with others in organizing and bargaining collectively through representatives of his own choosing, without intimidation or coercion from any source.
- (4) It is the policy of the state, in order to preserve and promote the interests of the public, the employee, and the employer alike, to establish standards of fair conduct in employment relations and to provide a convenient, expeditious and impartial tribunal by which these interests may have their respective rights and obligations adjudicated.

Enacted by Chapter 85, 1969 General Session

#### **34-20-2 Definitions.**

As used in this chapter:

- (1) "Affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce within the state.
- (2) "Commerce" means trade, traffic, commerce, transportation, or communication within the state.
- (3) "Election" means a proceeding in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives or for any other purpose specified in this chapter and includes elections conducted by the board or by any tribunal having competent jurisdiction or whose jurisdiction was accepted by the parties.
- (4)
  - (a) "Employee" includes any employee unless this chapter explicitly states otherwise, and includes an individual whose work has ceased as a consequence of, or in connection with,

any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment.

- (b) "Employee" does not include an individual employed as an agricultural laborer, or in the domestic service of a family or person at his home, or an individual employed by his parent or spouse.
- (5) "Employer" includes a person acting in the interest of an employer, directly or indirectly, but does not include:
  - (a) the United States;
  - (b) a state or political subdivision of a state;
  - (c) a person subject to the federal Railway Labor Act;
  - (d) a labor organization, other than when acting as an employer;
  - (e) a corporation or association operating a hospital if no part of the net earnings inures to the benefit of any private shareholder or individual; or
  - (f) anyone acting in the capacity of officer or agent of a labor organization.
- (6) "Federal executive agency" means an executive agency, as defined in 5 U.S.C. Sec.105, of the federal government.
- (7) "Franchise" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (8) "Franchisee" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (9) "Franchisor" means the same as that term is defined in 16 C.F.R. Sec. 436.1.
- (10) "Labor dispute" means any controversy between an employer and the majority of the employer's employees in a collective bargaining unit concerning the right or process or details of collective bargaining or the designation of representatives.
- (11) "Labor organization" means an organization of any kind or any agency or employee representation committee or plan in which employees participate that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- (12) "Labor relations board" or "board" means the board created in Section 34-20-3.
- (13) "Person" includes an individual, partnership, association, corporation, legal representative, trustee, trustee in bankruptcy, or receiver.
- (14) "Representative" includes an individual or labor organization.
- (15) "Secondary boycott" includes combining or conspiring to cause or threaten to cause injury to one with whom no labor dispute exists, whether by:
  - (a) withholding patronage, labor, or other beneficial business intercourse;
  - (b) picketing;
  - (c) refusing to handle, install, use, or work on particular materials, equipment, or supplies; or
  - (d) by any other unlawful means, in order to bring him against his will into a concerted plan to coerce or inflict damage upon another.
- (16) "Unfair labor practice" means any unfair labor practice listed in Section 34-20-8.

Amended by Chapter 370, 2016 General Session

### **34-20-3 Labor relations board.**

- (1)
  - (a) There is created the Labor Relations Board consisting of the following:
    - (i) the commissioner of the Labor Commission;
    - (ii) two members appointed by the governor with the consent of the Senate consisting of:
      - (A) a representative of employers, in the appointment of whom the governor shall consider nominations from employer organizations; and

- (B) a representative of employees, in the appointment of whom the governor shall consider nominations from employee organizations.
- (b)
- (i) Except as provided in Subsection (1)(b)(ii), as terms of members appointed under Subsection (1)(a)(ii) expire, the governor shall appoint each new member or reappointed member to a four-year term.
  - (ii) Notwithstanding the requirements of Subsection (1)(b)(i), the governor shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of members appointed under Subsection (1)(a)(ii) are staggered so one member is appointed every two years.
- (c) The commissioner shall serve as chair of the board.
- (d) A vacancy occurring on the board for any cause of the members appointed under Subsection (1)(a)(ii) shall be filled by the governor with the consent of the Senate pursuant to this section for the unexpired term of the vacating member.
- (e) The governor may at any time remove a member appointed under Subsection (1)(a)(ii) but only for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.
- (f) A member of the board appointed under Subsection (1)(a)(ii) may not hold any other office in the government of the United States, this state or any other state, or of any county government or municipal corporation within a state.
- (g) A member appointed under Subsection (1)(a)(ii) may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:
- (i) Section 63A-3-106;
  - (ii) Section 63A-3-107; and
  - (iii) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.
- (2) A meeting of the board may be called:
- (a) by the chair; or
  - (b) jointly by the members appointed under Subsection (1)(a)(ii).
- (3) The chair may provide staff and administrative support as necessary from the Labor Commission.
- (4) A vacancy in the board does not impair the right of the remaining members to exercise all the powers of the board, and two members of the board shall at all times constitute a quorum.
- (5) The board shall have an official seal which shall be judicially noticed.

Amended by Chapter 348, 2016 General Session

**34-20-4 Labor relations board -- Employees -- Agencies -- Expenses.**

- (1) The board may employ an executive secretary, attorneys, examiners, and may employ such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the state as it may from time to time find necessary for the proper performance of its duties. The board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys employed under this section may, at the direction of the board, appear for and represent the board in any case in court. Nothing in this act shall be construed to authorize the board to employ individuals for the purpose of conciliation or mediation (or for statistical work) where and if such service may be obtained from the Labor Commission.
- (2) All of the expenses of the board, including the necessary traveling expenses, incurred by the members or employees of the board under its orders, shall be allowed and paid on the

presentation of itemized vouchers therefor approved by the board or by any individual it designates for the purpose.

Amended by Chapter 375, 1997 General Session

**34-20-5 Labor relations board -- Offices -- Jurisdiction -- Member's participation in case.**

The principal office of the board shall be at the state capitol, but it may meet and exercise any or all of its powers at any other place. The board may, by one or more of its members or by the agents or agencies it may designate, prosecute any inquiry necessary to its functions in any part of the state. A member who participates in the inquiry may not be disqualified from subsequently participating in a decision of the board in the same case.

Amended by Chapter 297, 2011 General Session

**34-20-6 Labor relations board -- Rules and regulations.**

The board shall have authority from time to time to make, amend and rescind such rules and regulations as may be necessary to carry out the provisions of this act. Such rules and regulations shall be effective upon publication in the manner in which the board shall prescribe.

Enacted by Chapter 85, 1969 General Session

**34-20-7 Organization and collective bargaining -- Employees' rights.**

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall also have the right to refrain from any or all of such activities.

Enacted by Chapter 85, 1969 General Session

**34-20-8 Unfair labor practices.**

- (1) It shall be an unfair labor practice for an employer, individually or in concert with others:
  - (a) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 34-20-7.
  - (b) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it; provided, that subject to rules and regulations made and published by the board pursuant to Section 34-20-6, an employer is not prohibited from permitting employees to confer with the employer during working hours without loss of time or pay.
  - (c) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; provided, that nothing in this act shall preclude an employer from making an agreement with a labor organization (not established, maintained or assisted by any action defined in this act as an unfair labor practice) to require as a condition of employment, membership therein, if such labor organization is the representative of the employees as provided in Subsection 34-20-9(1) in the appropriate collective bargaining unit covered by such agreement when made.
  - (d) To refuse to bargain collectively with the representative of a majority of the employer's employees in any collective bargaining unit; provided, that, when two or more labor

organizations claim to represent a majority of the employees in the bargaining unit, the employer shall be free to file with the board a petition for investigation of certification of representatives and during the pendency of the proceedings the employer may not be considered to have refused to bargain.

- (e) To bargain collectively with the representatives of less than a majority of the employer's employees in a collective bargaining unit.
  - (f) To discharge or otherwise discriminate against an employee because the employee has filed charges or given testimony under this chapter.
- (2) It shall be an unfair labor practice for an employee individually or in concert with others:
- (a) To coerce or intimidate an employee in the enjoyment of the employee's legal rights, including those guaranteed in Section 34-20-7, or to intimidate the employee's family, picket the employee's domicile, or injure the person or property of the employee or the employee's family.
  - (b) To coerce, intimidate or induce an employer to interfere with any of the employer's employees in the enjoyment of their legal rights, including those guaranteed in Section 34-20-7, or to engage in any practice with regard to the employer's employees which would constitute an unfair labor practice if undertaken by the employer on the employer's own initiative.
  - (c) To co-operate in engaging in, promoting, or inducing picketing (not constituting an exercise of constitutionally guaranteed free speech), boycotting or any other overt concomitant of a strike unless a majority in a collective bargaining unit of the employees of an employer against whom such acts are primarily directed have voted by secret ballot to call a strike.
  - (d) To hinder or prevent, by mass picketing, threats, intimidation, force, or coercion of any kind the pursuit of any lawful work or employment, or to obstruct or interfere with entrance to or egress from any place of employment, or to obstruct or interfere with free and uninterrupted use of public roads, streets, highways, railways, airports, or other ways of travel or conveyance.
  - (e) To engage in a secondary boycott; or to hinder or prevent, by threats, intimidation, force, coercion, or sabotage, the obtaining, use or disposition of materials, equipment, or services; or to combine or conspire to hinder or prevent the obtaining, use or disposition of materials, equipment or services, provided, however, that nothing herein shall prevent sympathetic strikes in support of those in similar occupations working for other employers in the same craft.
  - (f) To take unauthorized possession of property of the employer.
- (3) It shall be an unfair labor practice for any person to do or cause to be done on behalf of or in the interest of employers or employees, or in connection with or to influence the outcome of any controversy as to employment relations, any act prohibited by Subsections (1) and (2) of this section.

Amended by Chapter 348, 2016 General Session

### **34-20-9 Collective bargaining -- Representatives -- Powers of board.**

- (1)
  - (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for those purposes shall be the exclusive representatives of all the employees in that unit for the purposes of collective bargaining in respect to rate of pay, wages, hours of employment, and of other conditions of employment.
  - (b) Any individual employee or group of employees may present grievances to their employer at any time.

- (2) The board shall decide in each case whether, in order to ensure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision of same.
- (3) Whenever a question affecting intrastate commerce or the orderly operation of industry arises concerning the representation of employees, the board may investigate such controversy and certify to the parties in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under Section 34-20-10, or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.
- (4)
  - (a) Whenever an order of the board made according to Section 34-20-10 is based in whole or in part upon facts certified following an investigation under Subsection (3), and there is a petition for the enforcement or review of such order, the certification and the record of the investigation shall be included in the transcript of the entire record required to be filed under Section 34-20-10.
  - (b) The decree of the court enforcing, modifying, or setting aside in whole or in part the order of the board shall be made and entered upon the pleadings, testimony, and proceedings set forth in the transcript.

Amended by Chapter 161, 1987 General Session

**34-20-10 Unfair labor practices -- Powers of board to prevent -- Procedure.**

- (1)
  - (a) The board may prevent any person from engaging in any unfair labor practice, as listed in Section 34-20-8, affecting intrastate commerce or the orderly operation of industry.
  - (b) This authority is exclusive and is not affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.
- (2) The board shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.
- (3) When it is charged that any person has engaged in or is engaged in any unfair labor practice, the board, or any agent or agency designated by the board, may issue and serve a notice of agency action on that person.
- (4)
  - (a) If, upon all the testimony taken, the board finds that any person named in the complaint has engaged in or is engaging in an unfair labor practice, the board shall state its findings of fact and shall issue and serve on the person an order to cease and desist from the unfair labor practice and to take other affirmative action designated by the commission, including reinstatement of employees with or without back pay, to effectuate the policies of this chapter.
  - (b) The order may require the person to make periodic reports showing the extent to which it has complied with the order.
  - (c) If, upon all the testimony taken, the board determines that no person named in the complaint has engaged in or is engaging in any unfair labor practice, the board shall state its findings of fact and shall issue an order dismissing the complaint.
- (5)
  - (a) The board may petition the district court to enforce the order and for appropriate temporary relief or for a restraining order.

- (b) The board shall certify and file in the court:
  - (i) a transcript of the entire record in the proceeding;
  - (ii) the pleadings and testimony upon which the order was entered; and
  - (iii) the findings and order of the board.
- (c) When the petition is filed, the board shall serve notice on all parties to the action.
- (d) Upon filing of the petition, the court has jurisdiction of the proceeding and of the question to be determined.
- (e) The court may grant temporary relief or a restraining order, and, based upon the pleadings, testimony, and proceedings set forth in the transcript, order that the board's order be enforced, modified, or set aside in whole or in part.
- (f) The court may not consider any objection that was not presented before the board, its member, agent, or agency, unless the failure or neglect to urge the objection is excused because of extraordinary circumstances.
- (g) The board's findings of fact, if supported by evidence, are conclusive.
- (h)
  - (i) If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce the evidence in the hearing before the board, its member, agent, or agency, the court may order additional evidence to be taken before the board, its member, agent, or agency, and to be made part of the transcript.
  - (ii) The board may modify its findings as to the facts, or make new findings, because of the additional evidence taken and filed.
  - (iii) The board shall file the modified or new findings, which, if supported by evidence, are conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order.

Amended by Chapter 382, 2008 General Session

#### **34-20-11 Hearings and investigations -- Power of board -- Witnesses -- Procedure.**

For the purpose of all hearings and investigations, which, in the opinion of the board, are necessary and proper for the exercise of the powers vested in it by Sections 34-20-9 and 34-20-10:

- (1) The board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy, any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question, before the board, its member, agent, or agency conducting the hearing or investigation. Any member of the board, or any agent or agency designated by the board, for these purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Attendance of witnesses and the production of evidence may be required from any place in the state at any duly designated place of hearing.
- (2) In case of contumacy or refusal to obey a subpoena issued to any person, any district court of Utah within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business upon application by the board shall have jurisdiction to issue to the person an order requiring the person to appear before the board, its member, agent, or agency, to produce evidence if so ordered, or to give testimony touching the matter under investigation or in question; and any failure to obey the order of the court may be punished by the court as a contempt.

- (3) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.
- (4) Complaints, orders, and other processes and papers of the board, its member, agent, or agency, may be served either personally, by certified or registered mail, by telegraph, or by leaving a copy at the principal office or place of business of the person required to be served. The verified return by the individual serving the documents setting forth the manner of the service shall be proof of the service, and the return post office receipt or telegram receipt when certified or registered and mailed or telegraphed shall be proof of service. Witnesses summoned before the board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the state, and witnesses whose depositions are taken and the persons taking them shall be entitled to the same fees paid for the same services in the courts of the state.
- (5) All departments and agencies of the state, when directed by the governor, shall furnish to the board, upon its request, all records, papers, and information in their possession relating to any matter before the board.

Amended by Chapter 296, 1997 General Session

**34-20-12 Willful interference -- Penalty.**

Any person who shall willfully resist, prevent, impede or interfere with any member of the board, or any of its agents or agencies, in the performance of duties pursuant to this act shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than one year, or both.

Enacted by Chapter 85, 1969 General Session

**34-20-13 Right to strike.**

This chapter does not interfere with, impede, or diminish in any way the right to strike.

Amended by Chapter 201, 1991 General Session

**34-20-14 Determining joint employment status -- Franchisors excluded.**

- (1) For purposes of determining whether two or more persons are considered joint employers under this chapter, an administrative ruling of a federal executive agency may not be considered a generally applicable law unless that administrative ruling is determined to be generally applicable by a court of law, or adopted by statute or rule .
- (2)
  - (a) For purposes of this chapter, a franchisor is not considered to be an employer of:
    - (i) a franchisee; or
    - (ii) a franchisee's employee.
  - (b) With respect to a specific claim for relief under this chapter made by a franchisee or a franchisee's employee, this Subsection (2) does not apply to a franchisor under a franchise that exercises a type or degree of control over the franchisee or the franchisee's employee not customarily exercised by a franchisor for the purpose of protecting the franchisor's trademarks and brand.

Enacted by Chapter 370, 2016 General Session